

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 6/29/99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Interactive Concepts Unlimited, Inc.

Serial Nos. 74/563,438 and 74/563,439

Joshua D. Thomas, Andrew P. Bridges and Diane E. Turriff of
Wilson Sonsini Goodrich & Rosati for applicant.

David C. Reihner, Trademark Examining Attorney, Law Office
107 (Thomas Lamone, Managing Attorney).

Before Cissel, Quinn and Bucher, Administrative Trademark
Judges.

Opinion by Quinn, Administrative Trademark Judge:

Applications have been filed by Interactive Concepts
Unlimited, Inc. to register the mark REALTIME SPORTS for
"compact discs featuring sports information, and
accompanying computer software and user documentation
manuals sold as a unit" (in International Class 9) and
"computerized information services in the fields of

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entertainment, sports, education, and related news" (in International Class 41).¹

The Trademark Examining Attorney has refused registration in each application under Section 2(e)(1) of the Act on the ground that applicant's mark, if used in connection with applicant's goods and/or services, would be merely descriptive thereof.

When the refusals were made final, applicant appealed. Applicant and the Examining Attorney have filed briefs. Because of the close similarity of the issues involved in these two appeals, the Board shall decide these cases in one opinion.

Applicant contends that its goods and services provide users the ability "to obtain sports-related information by electronic means on a timely basis" and that the term "real time" in applicant's mark "is meant to give the impression of timely availability of sports-related information."

(July 25, 1995 response, pp.6-8) According to applicant, the mark is just suggestive. In support of its arguments, applicant submitted examples of third-party registrations

¹ Application Serial Nos. 74/563,439 and 74/563,438, respectively, each alleging a bona fide intention to use the mark in commerce.

of marks which include the term "real time."²

The Examining Attorney maintains that the mark merely describes a significant characteristic of applicant's goods and services, namely that they provide users with access to sports information in real time. In support of the refusal, the Examining Attorney furnished a dictionary definition of the term "real time" and excerpts retrieved from the NEXIS data base.

It is well settled that a term is considered to be merely descriptive of goods and/or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods and/or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods and/or services in order for it to be considered to be merely descriptive thereof; rather,

² Mere listings of third-party registrations generally are not sufficient to make the registrations of record; copies of the registrations themselves are required for that purpose. In re Classic Beverage Inc., 6 USPQ2d 1383 (TTAB 1988). Further, evidence accompanying an appeal brief is untimely submitted. Trademark Rule 2.142. Despite these deficiencies, the Examining Attorney, in his appeal brief, considered the cited registrations as if properly of record. Thus, we have considered them in reaching our decision.

it is sufficient if the term describes a significant attribute or feature about them. Moreover, whether a term is merely descriptive is determined not in the abstract but in relation to the goods and/or services for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The term "real time" means, in relevant part, "the actual time during which a process takes place or an event occurs; at once; instantaneously; of or pertaining to applications in which the computer must respond as rapidly as required by the user or necessitated by the process being controlled." *Random House Compact Unabridged Dictionary* (2d ed. 1996).

The NEXIS excerpts include the following:

...units of its software product, which delivers via the Internet real-time news, sports scores and weather.
Media Daily, October 8, 1996

...plus interactive bulletin boards and a real-time Sports Ticker which will report up-to-the-minute scores of games in progress.
The Atlanta Journal and Constitution, July 13, 1997

JFAX also complements Smart Rules, a CompuServe service that provides E-mail via a pager and real-time stock, weather and sports updates.
CommunicationsWeek, July 7, 1997

Hundreds of Web sites provide real-time sports scores for all major events.
Los Angeles Times, June 16, 1997

...news software products from Marimba, PointCast, Starwave and others are now beginning to deliver real-time, personalized news, sports and financial information directly to the computer screens of our instant gratification society.
American Journalism Review, June 1997

The company delivers real-time stock quotes, financial and sports news and gaming information to more than 37,000 subscribers via wireless FM, cable and satellite transmission...
Telephone IP News, June 1997

DBC provides real-time stock quotes, financial, sports, news and gaming information to 10 partners...
Electronic Information Report, August 18, 1997

...they reported sports statistics in real-time to SportsTrax and AOL. Time elapsed in this process? Sometimes only a few seconds.
NetGuide, April 1, 1997

The NEXIS evidence shows that information, including sports information (e.g., scores of games), is transmitted, through the use of computer software and electronic networks, as events occur. We find that the mark, when applied to applicant's goods and/or services, immediately describes a feature of them, namely that they are used to obtain real-time (i.e., instantaneous) sports information.

Accordingly, because the term REALTIME SPORTS conveys forthwith a significant feature of applicant's goods, such term is merely descriptive thereof within the meaning of the statute. See: In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996)[VISUAL DESIGNER is descriptive of computer programs for controlling the acquisition of data from measurement devices for the purpose of analysis, display, testing and automatic control; the term describes a feature of the goods, namely that they permit programming applications to be visually designed].

With respect to the absence of any third-party uses of the term "real-time sports," the fact that applicant may be the first and/or only user of the term is not determinative where the term sought to be registered has a merely descriptive connotation. In re Eden Foods Inc., 24 USPQ2d 1757, 1761 (TTAB 1992). Further, the third-party registrations are of little help in determining the registrability of the mark at issue in this case. As often noted by the Board, each case must be decided on its own set of facts, and we are not privy to the facts involved with these registrations. While uniform treatment under the Trademark Act is highly desirable, our task here is to determine, based upon the record before us, whether applicant's mark is registrable.

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Decision: The refusal to register in each application
is affirmed.

R. F. Cissel

T. J. Quinn

D. E. Bucher
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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